

Complaint

Mr R is unhappy with what TSB Bank plc ("TSB") has agreed to do to put things right after he complained about the charges on his overdraft.

Background

One of our adjudicators looked at Mr R's complaint and he thought that what TSB had agreed to do to put things right – reducing the amount of Mr R's overdraft by the interest, fees and charges it shouldn't have added - was fair and reasonable in all of the circumstances of the case. Mr R disagreed and asked for an ombudsman's decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I think that what TSB has already agreed to do to put things right for Mr R is fair and reasonable in all the circumstances of his complaint. I'll explain why I think this is the case.

TSB has agreed that it ought to have realised that Mr R was struggling and that it shouldn't have added any interest, fees and charges to Mr R's account from December 2018. And it has agreed to refund all the interest, fees and charges added to Mr R's account from then in order to put things right.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced were advanced because typically those funds will have already been spent.

So we have to look at a way of asking a business to put things right in a fair and reasonable way. And where a business provided, or continued to allow a consumer to use, a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit.

This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year. That's what TSB has agreed to do here, so it has agreed to do what I'd normally expect a firm to do in these circumstances.

In this case, Mr R has been left with an outstanding balance even though the credits he's made to his account have been factored in and he's been 'refunded' all of the interest, fees and charges applied from December 2018. So while Mr R has been left with an outstanding

balance to repay and he might be unhappy with this, TSB has done what I'd normally expect it to do here.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it continued to provide credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mr R believes that TSB should do more. As I understand it, he's unhappy at being left with a balance and the default that's been registered on his credit file.

I've carefully thought about what Mr R has said. But all the interest, fees and charges TSB shouldn't have added have been removed from the overdraft. So what Mr R is left with to repay are the funds which he used and benefitted from and crucially I don't agree that the interest, fees and charges have left him with a debt that he wouldn't otherwise have been left with. I'd also add that given what Mr R has said about his circumstances at the time, it's difficult for me to hold TSB solely responsible for the tough time which he's had and which I'm sorry to have heard about.

I now turn to Mr R's credit file. Mr R says that TSB should remove all negative information that it recorded on his credit file. However, all parties are in agreement that TSB ought to have taken corrective action on Mr R's overdraft in December 2018. And this would have resulted in adverse action being recorded on Mr R's account at this point.

So removing any adverse information here would require me to tell TSB it needs to refund the interest, fees and charges it added from December 2018 because it should have known Mr R was unable to repay his overdraft, in line with the terms and conditions, but not reflect this on his credit file. I think that it would be unfair to TSB and Mr R as well as unreasonable its logic if I asked TSB to amend Mr R's credit file in this way – as that doesn't reflect what would more likely than not have, or did actually, happen here.

By asking TSB to remove any adverse information here, I'd be asking it to record wholly inaccurate information and telling it to record that Mr R was in a position to pay his overdraft balance in accordance with the terms and conditions, which for the reasons the complaint has been upheld, simply wasn't the case.

I think that requiring TSB to amend Mr R's credit file in the way he's suggested would be counterproductive and arguably not in Mr R's best interests, or those of any potential lender. So having carefully thought about everything, including everything Mr R has told us, I'm satisfied that backdating the default on Mr R's account to December 2018, which reflects any period of allowing Mr R to bring the account up to date, is fair and reasonable here.

Overall while I can understand why Mr R is disappointed at having a balance to repay and a default on his credit file, I'm not satisfied that these are compelling reasons for me to depart from our usual approach here.

Bearing in mind all of this, I'm satisfied that what TSB has already done to put things right for Mr R – reworking his account so that all the interest, fees and charges added since December 2018 are removed and backdating the default to this date – is fair and reasonable in the circumstances of this case and I'm not requiring it to do anything more.

My final decision

For the reasons I've explained, I'm satisfied that what TSB Bank plc has already agreed to do to put things right for Mr R is fair and reasonable in the circumstances of his complaint. So I'm not requiring it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 11 March 2022.

Jeshen Narayanan
Ombudsman